



Environmental Guidance Regulatory Bulletin

Office of Environmental Policy and Assistance • RCRA/CERCLA Division (EH-413)

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Second Comprehensive Guideline for Procurement of Products Containing Recovered Materials

Effective Dates: Amendment adding procurement provisions, November 13, 1997, and amendment adding new procurement items, November 13, 1998.

Introduction:

Section 6002 of the Resource Conservation and Recovery Act (RCRA) requires that government agencies increase their purchases of products containing recovered materials (i.e., waste materials and by-products that have been recovered or diverted from solid waste, not including materials and by-products generated from and commonly reused within an original manufacturing process). The purpose of this mandate is to use government buying power to encourage the expansion of markets for materials and products that are, or that contain, recovered resources. Increasing the demand for recovered resources will reduce solid waste volumes. RCRA requires procuring agencies (Federal, State, and agencies of political subdivisions of States that use appropriated Federal funds) and their contractors to buy designated items with the highest recovered material content practicable. To that end, the Environmental Protection Agency (EPA) is required under RCRA to designate items that are or can be produced with recovered materials, and to recommend practices for the procurement of designated items by procuring agencies.

On May 1, 1995, the first Comprehensive Procurement Guideline (CPG I) was published at 60 FR 21370. That CPG and its accompanying Recovered Material Advisory Notice (RMAN I) (60 FR 21386) are the subject of a January 1996 Environmental Guidance Regulatory Bulletin, *Comprehensive Guideline for Procurement of Products Containing Recovered Materials*, published by the Office of Environmental Policy and Assistance (EH-41).

This Regulatory Bulletin discusses the November 13, 1997, Federal Register notice that: 1) amends CPG I with the publication of the second CPG (CPG II) and RMAN (RMAN II) developed by EPA following the process of Executive Order (EO) 12873; 2) codifies changes to 40 CFR 247 required due to previous omissions; and 3) clarifies certain aspects of CPG I.

Statutory Authority:

The action discussed in this bulletin is promulgated under the authority of Sections 2002(a) and 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6912(a) and 6962, and Section 502 of Executive Order 12873, "Federal Acquisition, Recycling, and Waste Prevention." (58 FR 54911, October 22, 1993)

RCRA Section 6002(e) requires that EPA designate items that are or can be made with recovered materials and recommend practices to assist procuring agencies in purchasing the designated items. Federal, State, and political subdivisions that use appropriated Federal funds, and their contractors, are required to buy EPA-designated items with the highest recovered material content practicable. EO 12873 specifies the procedure EPA is to follow in complying with Section 6002(e). In accordance with EO 12873, EPA published a proposed rule for public comment on November 7, 1996, (61 FR 57748) that added 13 new items that are or can be made with recovered materials. DOE commented on this proposed rule by way of a letter dated February 5,

1997¹). On November 13, 1997, EPA published the final amended CPG II and its accompanying RMAN II in the Federal Register (62 FR 60962 and 62 FR 60976), adding 12 new items that are or can be made with recovered materials and codifying provisions of RCRA inadvertently omitted from CPG I.

Background:

A detailed background discussion of the manner in which RCRA Section 6002 is implemented and EPA's actions prior to the promulgation of this rule is provided in the DOE January 1996 Environmental Guidance Regulatory Bulletin, *Comprehensive Guideline for Procurement of Products Containing Recovered Materials*, which is available for viewing/downloading at the EH-41 web site at <http://tis-nt.eh.doe.gov/oepa>. The bulletin covers: 1) the manner in which EO 12873 revised the procedures used by EPA to comply with RCRA Section 6002, 2) the reorganization rule, recodified at 40 CFR 247, and 3) the addition of 19 new items to the then-existing list of 5 items that are or can be made of recovered materials.

Provisions of the New Rule:

The new, final rule published on November 13, 1997, at 62 FR 60962 and 62 FR 60976 (CPG II and RMAN II respectively) designates 12 new items; clarifies the previous designations of floor tiles, structural fiberboard, and laminated paperboard; and codifies procurement limitations from RCRA section 6002 that were inadvertently omitted in CPG I.

CPG II, with RMAN II, adds 12 new items to the 24 already designated in CPG I and RMAN I. The new additions are marked with asterisks in Table I, which provides a complete list of CPG items.

In CPG I, EPA amended 40 CFR 247.2 to include the RCRA provisions on the applicability of the guidelines to procuring agencies. That amendment failed to include the statutory exceptions to the general requirement to purchase designated items found in RCRA Section 6002(c)(1)(A) through (C). The

November 13, 1997, CPG II Federal Register notice, adds 40 CFR 247.2(d) to codify these exceptions to the procurement requirements. The exceptions allow a procuring agency to decide not to purchase EPA-designated items with recovered materials if: 1) the agency is unable to secure a satisfactory level of competition; 2) the item is not available within a reasonable period of time; 3) the item fails to meet the reasonable performance standards set forth in the agency's specifications; or 4) the item is available only at an unreasonable price.

The November 13, 1997, Federal Register notice also clarifies two apparent misunderstandings regarding CPG I designations. CPG I designated floor tiles, structural fiberboard, and laminated paperboard, and RMAN I provided recommendations for purchasing these items. The designations apparently created confusion regarding the obligation on the part of procuring agencies to purchase these items for specific applications. With respect to floor tiles, EPA described in RMAN I, in general terms, a number of areas where floor tiles with specified minimum recovered rubber or plastic content for "heavy duty/commercial type" applications could be utilized. These included "entrance ways to airports and stores, furniture showrooms, skating rinks, and fitness centers." This discussion apparently caused some procuring agencies to conclude that EPA recommended that such tile always be used in such applications. This was not EPA's intention. The November 13, 1997, Federal Register notice clarifies EPA's position at 62 FR 60965 and also articulates that EPA is not at this time recommending floor tile made with recovered materials for standard office or more general purpose uses. The recommendation would be appropriate for specialty purposes involving limited flooring areas where grease, tar, snow, ice, wetness or similar substances or conditions are likely to be present and tile is specified as a floor covering.

Similarly, CPG I designated structural fiberboard and laminated paperboard products for applications other than building insulation [40 CFR 247.12(b)], including acoustical and non-acoustical ceiling tiles and lay-in panels. EPA clarifies at 63 FR 60965 that the recommendation applies only if the procuring agency is purchasing a cellulosic fiberboard acoustical ceiling tile. An agency is not precluded from specifying a ceiling tile made of mineral fiber or other competing material rather than fiberboard. If a cellulosic fiberboard is specified, it should be composed of recovered materials as specified in RMAN I.

¹ Office of Environmental Guidance Memorandum: *Re: 61 FR 57748, "Comprehensive Guideline for Procurement of Products Containing Recovered Material – Proposed Amendment."* See: <http://tis-nt.eh.doe.gov/oepa/guidance/rcra/procure.pdf>

**TABLE I
CATEGORIES AND DESIGNATED ITEMS**

Paper and Paper Products

Vehicular Products

- Engine Coolants
- Re-refined Lubricating Oils
- Retread Tires

Construction Products

- Structural Fiberboard
- Laminated Paperboard
- Carpet
- Floor Tiles
- Patio Blocks
- Building Insulation Products
- Cement and Concrete Containing
 - Coal Fly Ash
 - Ground, Granulated Blast Furnace Slag
- Shower and Restroom Dividers/Partitions*
- Consolidated and Reprocessed Paint for Specified Uses*

Transportation Products

- Traffic Cones
- Traffic Barricades
- Parking Stops*
- Channelizers*
- Delineators*
- Flexible Delineators*

Park and Recreation Products

- Playground Surfaces
- Running Tracks
- Plastic Fencing for Specified Uses*

Landscaping Products

- Hydraulic Mulch
- Yard Trimmings Compost
- Garden and Soaker Hoses*
- Lawn and Garden Edging*

Non-paper Office Products

- Office Recycling Containers
- Office Waste Receptacles
- Plastic Desktop Accessories
- Toner Cartridges
- Binders
- Plastic Trash Bags
- Printer Ribbons*
- Plastic Envelopes*

Miscellaneous

- Pallets*

* Added in CPG II

**Impact of the New Rule on DOE
Operations:**

The effective date of CPG II is November 13, 1998, so DOE has until that date to add the designated items of CPG II to the DOE Affirmative Procurement Program. The requirements of that program will be applicable to any of the 12 additional designated items purchased after November 13, 1998. DOE guidance regarding the Affirmative Procurement Program will be updated in 1998 to incorporate the changes discussed in this Regulatory Bulletin.

The procurement exceptions codified at 40 CFR 247, that EPA inadvertently failed to include in CPG I, are effective immediately, but will have no impact on DOE. The exceptions were statutory [RCRA Section 6002(c)] and codification is merely a restatement of the statute. These exceptions were included in the original DOE Affirmative Procurement Program, dated May 1994, and its August 1996 revision, "U.S. Department of Energy Affirmative Procurement Program for Recycled Products: 1996 Guidance." This 1996 guidance reflects EO 12873 in that it requires that 100% of an agency's purchases of designated items contain recovered materials *unless* price, competition, availability, and performance criteria cannot be met. Written justification is required if non-recycled designated items are purchased. As always, procuring agencies are required to report annually on the procurement of all 36 designated items, whether recycled or non-recycled. The first report including all 36 items will be for Fiscal Year 1999.

Please direct questions about the RCRA Comprehensive Guideline for Procurement of Products Containing Recovered Materials to:

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